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Case No. EDCV 18-2432 MWF (PVC)

## ORDER ACCEPTING FINDINGS, CONCLUSIONS AND RECOMMENDATIONS OF UNITED STATES MAGISTRATE JUDGE

CYNTHIA SWAIN, Warden,

Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, all the records and files herein, the Report and Recommendation of the United States Magistrate Judge, and Petitioner's objections. After having made a *de novo* determination of the portions of the Report and Recommendation to which objections were directed, the Court concurs with and accepts the findings and conclusions of the Magistrate Judge.

Petitioner's objections largely reassert prior arguments that were addressed and rejected in the Report and Recommendation. (*See* Objections, Dkt. No. 36). However, one new contention warrants attention. In the Petition, Petitioner alleged that prison officials violated his Fourth Amendment right against unreasonable searches and seizures when they opened his mail. This claim was fully addressed in the Report and Recommendation. However, in his objections, Petitioner asserts for the first time that he

1 had a First Amendment right to use the mails as a means of free expression, a right which  
2 could not be infringed upon by prison authorities who opened and read his outgoing mail,  
3 specifically a “private sealed letter to a third party” that should have been “sent out  
4 *unopened and uninspected.*” (*Id.* at 1-2 (emphasis in original); *see also id.* at 7-11). In  
5 support of this contention, Petitioner primarily relies on *Procunier v. Martinez*, 416 U.S.  
6 396 (1974) (“*Martinez*”) (setting forth factors for evaluating a First Amendment claim  
7 relating to the regulation of a prisoner’s outgoing mail), *overruled on other grounds by*  
8 *Thornburgh v. Abbott*, 490 U.S. 401, 413-14 (1989) (setting forth factors for evaluating a  
9 First Amendment claim relating to the regulation of a prisoner’s incoming mail).

10  
11 In *Martinez*, the Supreme Court held that *censorship* of prisoner mail infringes a  
12 right protected by the First Amendment unless certain criteria are met. *Martinez*, 416 U.S.  
13 at 413. According to the *Martinez* Court, censorship of a prisoner’s outgoing mail is  
14 justified only if (1) the regulation authorizing censorship furthers an important or  
15 substantial government interest unrelated to the suppression of expression, and (2) the  
16 limitation of First Amendment freedoms is no greater than is necessary or essential to the  
17 protection of the particular government interest involved. *Id.* at 413-14; *see also Lane v.*  
18 *Swain*, 910 F.3d 1293, 1295 (9th Cir. 2018), cert. denied, 140 S. Ct. 60 (2019)  
19 (summarizing *Martinez* factors). Applying these standards, the *Martinez* Court affirmed  
20 the district court’s invalidation of regulations which authorized censorship of outgoing  
21 prisoner mail by prison officials merely on the ground that the prisoner’s statements  
22 “unduly complain” or “magnify grievances,” were “defamatory,” or were “otherwise  
23 inappropriate.” *Martinez*, 416 U.S. at 415. The Court found that these regulations were  
24 improper because they “fairly invited prison officials and employees to apply their own  
25 personal prejudices and opinions as standards for prisoner mail censorship.” *Id.*

26  
27 At the same time, the *Martinez* Court noted that an “obvious example of justifiable  
28 censorship of prisoner mail” would be the “refusal to send or deliver letters concerning

1 escape[] plans or containing other information concerning proposed criminal activity,  
2 whether within or without the prison,” or the refusal to “transmit encoded messages.” *Id.*  
3 at 413. Accordingly, the Court did not question a prison’s right to *inspect* outgoing  
4 prisoner mail, but merely set limits on when the prison could justifiably censor a  
5 prisoner’s mail based on its contents. *Martinez* does not support Petitioner’s apparent  
6 contention that because he was in a low security federal prison, he had a First Amendment  
7 right to send out mail “unopened and uninspected.” (Obj. at 1); *see also Altizer v. Deeds*,  
8 191 F.3d 540, 549 (4th Cir. 1999) (“Because there is a substantial governmental interest in  
9 censoring certain materials from an inmate’s outgoing mail, *e.g.*, materials detrimental to  
10 the security, good order, and discipline of the institution, or dangerous to the public, there  
11 is *a fortiori* a legitimate penological interest in opening and inspecting an inmate’s  
12 outgoing mail for such material. Thus, although an inmate’s First Amendment rights *may*  
13 be violated when his outgoing mail is censored, his First Amendment rights are not  
14 violated when his outgoing mail is simply opened and inspected . . . .”) (emphasis in  
15 original); *cf. Turner v. Safley*, 482 U.S. 78, 89 (1987) (a blanket prohibition on  
16 correspondence between prisoners housed in different institutions is “reasonably related to  
17 legitimate penological interests” and therefore “does not unconstitutionally abridge the  
18 First Amendment rights of prison inmates”).

19  
20 Petitioner’s First Amendment claim, as articulated in his objections, is not that his  
21 mail was censored, but rather that prison officials improperly inspected his “private sealed  
22 letter to a third party” that should have been delivered to the addressee “unopened and  
23 uninspected.” Petitioner had no First Amendment protection preventing prison officials  
24 from opening and inspecting his outgoing mail given the legitimate penological interest in  
25 keeping the institution and the public safe from harm. Further, Petitioner’s mail was not  
26 legal mail. *See Hayes v. Idaho Correctional Center*, 849 F.3d 1204, 1208 (9th Cir. 2017)  
27 (holding that the opening of legal mail by prison officials outside of the presence of the  
28 prisoner violated his First Amendment rights). For these reasons, Petitioner’s First


1 Amendment claim fails, and all of his Objections are overruled.

2  
3 IT IS ORDERED that the Petition is denied and Judgment shall be entered  
4 dismissing this action with prejudice.

5  
6 IT IS FURTHER ORDERED that the Clerk serve copies of this Order and the  
7 Judgment herein on Petitioner and counsel for Respondent.

8  
9 LET JUDGMENT BE ENTERED ACCORDINGLY.

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11 Dated: March 31, 2020

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14 MICHAEL W. FITZGERALD  
15 UNITED STATES DISTRICT JUDGE  
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